Wireless Facilities

Two firms, Omnipoint and AT&T Wireless, presented concerns about wireless telecommunications. In general, the Judge concluded that such firms should have non-discriminatory access to utility facilities, and the rates and rules for wireless attachments to utility poles should be comparable to those for other attachments, absent any significant differences. The Judge also recommended that the electric utilities and wireless carriers be permitted to negotiate the terms for attachments to high-voltage electric transmission towers. Exceptions to these recommendations are discussed next.

1. High-Voltage Electric Transmission Towers

AT&T and Omnipoint except to the Judge's proposal to allow negotiations for attachments to high-voltage electric transmission towers. AT&T says the electric utilities may abuse the process by presenting excessive demands and by purposefully delaying the deployment of wireless facilities. It proposes that tariffed rates and standard contracts be used for all such attachments.

According to Omnipoint, there is no significant difference between high-voltage electric towers and utility distribution poles that warrants private negotiations in one case and regulated rates in the other. It says both may be used by wireless firms as alternatives to constructing their own towers. Like AT&T, it believes that Commission-established rates and rules for wireless attachments to electric towers would provide it quicker access than would private negotiations.

In response, the electric industry says private negotiations are workable and should not hinder the roll-out of wireless services. In support of its position, the electric industry points to the large number of base stations Omnipoint obtained in the New York City area using this process. It also points to the electric utilities' pending negotiations with wireless firms as being fruitful and productive.

Until now, there has been little need for us to address issues concerning wireless firms' access to utility facilities and, thus, the prevailing pole attachment rates do not include or reflect the costs of the tower facilities at issue here. The use of regulated rates and formal regulations for wireless attachments to high-voltage electric towers may prove to be unnecessary if the electric utilities and wireless firms are able to set their own, market-based rates for such attachments. Before we would consider adopting any elaborate regulatory approach to such matters, the parties should attempt to structure their own transactions. Only if an electric utility refuses to negotiate in good faith, or otherwise unreasonably frustrates negotiations, should we become directly involved in such matters. We note that this overall approach is consistent with the processes employed by the Telecommunications Act of 1996.

2. Utility Distribution Poles

The electric industry believes that wireless attachments to utility poles should also be subject to private negotiations. In support of its position, the electric industry claims that a competitive market exists for wireless attachments; wireless firms are capable of negotiating their own agreements; wireless facilities may not conform to the communications space available on utility poles; and there is no urgency that warrants governmental intervention. It further claims that Omnipoint has already met its initial FCC-imposed "build out" requirements.[1]

As to the market for wireless attachments, the electric industry claims as many alternatives exist for these facilities as there are elevated locations. Consequently, the electric industry believes it should be allowed to obtain the same prices that wireless firms would pay to other owners of available locations.

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[1] This refers to federal licensing requirements that wireless firms install sufficient facilities to serve increasingly larger percentages of the population in their service areas.

Turning to the differences between wire and wireless pole attachments, the electric industry says it is currently unclear how the wireless firms would seek to use the poles. If they expect to use the tops of the poles, and expect to reach heights of 70 to 90 feet, the electric industry continues, the price for such attachments would necessarily differ from the current tariff prices. If regulated rates for wireless attachments are to be established, the electric industry believes, a proceeding is needed to explore the wireless firms' requirements and to design appropriate rates.

In response, Omnipoint denies that it has completed its build-out requirements in New York. It points out that antenna sites will still be needed in many municipalities and rural areas throughout the upstate region in the next few years. It also notes that it must deploy enough antennas to serve one-third of an area's population within five years, and two-thirds within ten years. Consequently, Omnipoint says, it truly needs non-discriminatory access to utility facilities, and it believes private negotiations may not be sufficiently prompt and may not produce reasonable rates.

The record in this case indicates that wireless attachments to utility distribution poles may or may not resemble or conform to the traditional use of such facilities. This depends on the technology they use and the wireless firms' requirements.[1] To the extent wireless attachments conform to the traditional use of the utility pole structure, wireless firms should be afforded the same rates and terms as are available to any other attacher. But if a wireless firm requires a nonstandard or unique attachment to a utility pole, and if the electric company is willing to make the necessary pole modifications to accommodate such a use, the price and terms for such attachments should be determined through private negotiations. As in the case of wireless attachments to high-voltage electric transmission towers, we would be available to

[1] Tr. 1,320-1,323; 1,342.

the parties to consider their complaints and facilitate resolution of their differences should any unreasonable obstacles to negotiations arise.

3. CTTANY's Exception

CTTANY urges us to maintain the distinction between high-voltage electric transmission towers and utility poles with transmission lines attached to them. If private negotiations are allowed for attachments to electric transmission towers, CTTANY believes, regulated rates should still prevail for standard attachments to electric distribution poles that may also have electric transmission lines on them.

CTTANY is correct and we will continue to distinguish between high-voltage electric transmission towers, for which attachments have not previously been sought, and utility company distribution poles that are subject to tariff rates for standard attachments.

Pathway Facilities

The term "pathway facilities" was coined by AT&T and used by it to refer to all utility facilities to which a telecommunications carrier may require access, including poles, conduits, ducts, manholes, controlled environment vaults, rights-of-way, entrance facilities, building vaults, risers, and telephone closets. AT&T seeks to establish non-discriminatory access rights to all such facilities.

The Judge generally agreed with AT&T that access to such facilities should be available to competitive service providers and that any such troublesome access matters should be addressed when they appear. On exceptions, the electric industry says there is no need to expand this proceeding to consider pathway facilities now. It points out that the record presents no such issues to warrant our attention.

In response, AT&T and CTTANY take odds with the electric industry's characterization of the record, the Judge's

recommended decision, and certain FCC decisions. AT&T continues to urge us to address pathway facilities here.

The Judge has adequately addressed this matter, which does not require any specific action at this time. In the future, should such matters as access to buildings and other facilities controlled by utilities arise, in a context presenting specific facts and policy issues, we will address them accordingly.

The Commission orders:

1. To the extent it is consistent with the foregoing opinion, the recommended decision of Administrative Law Judge William Bouteiller, issued December 31, 1996, is adopted as part of this opinion and order. Except as here granted, all exceptions to that recommended decision are denied.

2. Central Hudson Gas & Electric Corporation, Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are directed to cancel effective no later than July 1, 1997 and on not less than one day's notice, the proposed tariff amendments listed in the Appendix.

3. This proceeding is continued.

By the Commission,

(SIGNED) JOHN C. CRARY
Secretary

CASE 95-C-0341 APPENDIX

SUBJECT: Filings by:

CENTRAL HUDSON GAS & ELECTRIC CORPORATION
(Case 97-E-0761)

Amendment to Schedule P.S.C. No. 14 - Electricity
Nineteenth Revised Leaf No. 22M
Issued: April 10, 1997 Effective: August 1, 1997
Received: April 14, 1997

LONG ISLAND LIGHTING COMPANY
(Case 97-E-0713)

Amendment to Schedule P.S.C. No. 7 - Electricity
Twentieth Revised Leaf No. 27C
Issued: March 27, 1997 Effective: July 1, 1997
Received: March 27, 1997

NEW YORK STATE ELECTRIC & GAS CORPORATION
(Case 96-E-0470)

Amendment to Schedule P.S.C. No. 90 - Electricity
Thirteenth Revised Leaf No. 22
Issued: April 23, 1996 Effective: July 1, 1996*
Received: April 29, 1996
*Postponed to July 1, 1997 by S.P.O. 96-E-0470SP2

NIAGARA MOHAWK POWER CORPORATION
(Case 96-E-0533)

Amendment to Schedule P.S.C. No. 207 - Electricity
Twenty-Second Revised Leaf No. 71
Issued: June 10, 1996 Effective: September 16, 1996*
Received: June 12, 1996
*Postponed to July 1, 1997 by S.P.O. 96-E-0533SP2

ORANGE AND ROCKLAND UTILITIES, INC.
(Case 97-E-0805)

Amendment to Schedule P.S.C. No. 2 - Electricity
Seventeenth Revised Leaf No. 21G
Issued: April 18, 1997 Effective: August 1, 1997
Received: April 18, 1997

ROCHESTER GAS AND ELECTRIC CORPORATION
(Case 97-E-0481)

Amendment to Schedule P.S.C. No. 14 - Electricity
Fourth Revised Leaf No. 71B
Issued: March 7, 1997 Effective: July 1, 1997
Received: March 6, 1997